U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: NOV 0 5 2013 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician specializing in neonatology, a medical discipline dealing with the care of newborn and premature infants. At the time she filed the petition, the petitioner was a fellow at Rhode Island. USCIS records indicate that the petitioner now works for the New York.

The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on July 2, 2012. The director acknowledged the intrinsic merit of neonatology, and found that the petitioner's ongoing medical research is national in scope. The issue to be decided here concerns the third prong of the *NYSDOT* national interest test.

Describing the exhibits submitted in support of the petition, counsel stated that the petitioner's "influential publications . . . have been instrumental in educating other clinicians. . . . [H]er original

research is both progressive and extraordinary." Counsel cited "published materials mentioning her name," and the petitioner's "work as a member of the editorial team of the [redacted]." Counsel also asked the director to "take into consideration her unique roles within major academic teaching hospitals."

The petitioner submitted six witness letters. Five of the witnesses were involved in the petitioner's professional training at the [redacted] or at [redacted]. Dr. [redacted] associate professor of pediatrics and chief of the neonatology division at [redacted], stated:

> Not only are there very few neonatologists worldwide, but among that small group, it is rare to find physicians who conduct research. As one of the very few neonatologists conducting research, [the petitioner] contributes important work to the field.
>
> [The petitioner] conducts research on complex topics such as the use of nitric oxide in the treatment of persistent pulmonary hypertension. Published in the [redacted], [the petitioner] is particularly well-known for this work.

Dr. [redacted] stated that researchers have studied "the beneficial effect of nitric oxide" (NO) since 1992 and that the petitioner "played a major part in one such study, where she studied the correlation between oxygenation response to inhaled NO in infants with PPHN [persistent pulmonary hypertension of the newborn] secondary to parenchymal lung disease and initial methemoglobin level to cumulative nitric oxide exposure ratio."

Dr. Rita Marie Ryan, now a professor at the [redacted] stated:

> It is my professional opinion that [the petitioner] is a neonatology specialist at the top of her field. I worked with [the petitioner] directly during her pediatric residency at [redacted] where I was the Chief of the Division of Neonatology. She also performed research with my faculty in [redacted] in neonatology during her residency. . . .
>
> [The petitioner] has expertise in the most serious conditions affecting infants. . . . [The petitioner] is known for her facility with even the most complex cases. . . . [The petitioner] is uniquely capable of addressing complicated issues that arise in the neonatology unit.
>
> . . . [The petitioner] has received multiple awards for her work.

Prof. [redacted] is one of several witnesses to claim that the petitioner "is known" or "well known" for her work in the field, but every such claim comes from a witness who has worked with the petitioner. Such statements are not evidence of a broader reputation. Prof. [redacted] did not identify any of the petitioner's claimed awards, and the record contains no documentation of such awards. Going

on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner identified three awards in her *curriculum vitae*: two travel awards from the and a "Physician recognition award [from] the ." The record contains no documentation of this last award. The travel awards covered some of the expenses relating to the petitioner's attendance at conferences. The record does not reveal the criteria that qualified her for the travel awards.

Dr. associate professor at praised the petitioner's "clinical excellence and her leadership in the field." Dr. also asserted that the petitioner's research "is frequently published." The record identifies three articles by the petitioner (one from 2009 and two from 2012).

Professor neonatal-perinatal medicine fellowship director at asserted that the petitioner "is co-author of 2 manuscripts published from her work in Dr. lab this year." Prof. indicated that, in addition to clinical duties, the petitioner "is involved in novel basic science (laboratory) research regarding the role of TRPV4 receptors in type II cells exposed to lung injury."

Professor stated: "Only a small percentage of board certified pediatricians are also board certified in neonatology." He did not specifically claim that the petitioner is board certified in neonatology, or otherwise explain the relevance of this comment. The record contains no evidence of such certification from the and the petitioner herself did not claim it on her *curriculum vitae*. Prof. stated that the petitioner "is well known for her exceptional abilities in neonatology," and that "[h]er provision of persistent, detailed care has saved the lives of countless patients."

The only initial witness with no stated affiliation with or is Dr. associate professor at Dr. did not repeat other witnesses' claims that the petitioner "is particularly well-known" in her field, but instead stated:

> Based on her *curriculum vitae*, it is my professional opinion that [the petitioner] is a qualified physician who is undergoing advanced training in the field of Neonatology. I would anticipate that following completion of her training in 2013, her clinical practice and research will continue to benefit patients in the U.S. and for this reason her immigration is in the U.S. national interest. . . .
>
> She has co-authored 1 article in clinical research and 2 articles in bench research, which have been published in peer-reviewed journals. . . .

> [The petitioner] is a neonatologist-in-training . . . [who] is gaining unique procedural skills, commitment to the education of new physicians, as well as research abilities in pulmonary disorders of neonates.

As quoted above, the initial submission's only independent witness claimed no knowledge of the petitioner's work apart from the information in the petitioner's *curriculum vitae* and repeatedly indicated that the petitioner's training was not yet complete at the time of filing. The latter assertion appears to conflict with the claim that the petitioner has held leadership roles in her field.

Finally, the petitioner's *curriculum vitae*, as submitted, is a partially-completed template document originally prepared by an unidentified third party. A line in that document reads: "Cited xx times in the following major journals……none." A section heading reads: "Was selected for lead roles at the following prominent institutions, give selectivity criteria ---- how many people applied and how many were selected." Another section heading reads: "Very briefly describe main distinction regarding clinical abilities in a few sentences, for example, am one of the few in the country able to perform the following procedure, regarded as one of the lead experts in the country with regard to diagnosis or treatment of the following condition."

The director issued a request for evidence on November 21, 2012, stating: "The petitioner did not provide specific information of how the beneficiary's prior achievements have influenced the field of endeavor." The director acknowledged the petitioner's three journal articles, but stated that the petitioner had not established the impact that these articles have had on others in the field. The director stated that the petitioner had not submitted evidence to support the claim of membership on the editorial boards of two journals.

In response, the petitioner claimed to be " The petitioner did not substantiate this claim. The petitioner's statement incorporates what appears to be updated language from the previously submitted *curriculum vitae*. A heading now reads: "Cited xx times in the following major journals……attached."

The petitioner submitted partial copies of two articles with citations to the petitioner's work. The petitioner has not established that this level of citation indicates significant impact or influence in the petitioner's field. One citation, to the petitioner's 2009 article, is in an article by Dr. who was a co-author of the cited article. Self-citation in this manner does not show influence beyond the research group that produced the original article.

The other citation, to one of the petitioner's 2012 articles, appeared in a review article from the open-access journal The article was "Received 17 August 2012; Accepted 24 November 2012," and therefore it appeared after the petition's July 2012 filing date. The record does not show exactly when Dr. article appeared, but its copyright date is 2012, and the petitioner herself claimed no citations when she first filed the petition. Therefore, it evidently appeared after the filing date. There is no evidence of citation of the petitioner's work before the petition's filing date.

As evidence of the petitioner's judging work, the petitioner submitted copies of evaluations that he had completed in January 2013, regarding other trainees at These materials post-date the filing of the petition, and appear to represent routine performance evaluations. Routine supervisory functions do not establish eligibility for the waiver.

The petitioner submitted copies of previously submitted witness letters, as well as five letters not previously in the record. Three of the newly submitted letters are dated late June 2012, but did not accompany the filing of the petition in July 2012.

Dr. assistant professor at stated that the petitioner "was elected to the . . . based on her outstanding clinical, research and administrative expertise in the field of newborn medicine," and "played a critical role in the design, refinement and implementation" "of a critical screening program." The record contains no other evidence regarding the committee or the screening program.

Dr. clinical assistant professor at stated that the petitioner's "research . . . has quickly gained international attention." The witness did not elaborate or cite any evidence of this claimed attention.

Professor stated that the petitioner's "research on the response to inhaled nitric oxide in persistent pulmonary hypertension has placed her at the forefront of neonatology research." Prof. Rubin claimed that the findings that the petitioner reported in a 2009 article "have since been incorporated as standard practice at many institutions." Prof. Rubin did not identify any of those institutions or cite any supporting evidence.

Two letters signed by Professor at the Los Angeles, and by Dr. assistant professor at the contain nearly identical assertions. Prof. letter contains the following passage:

> Her work in neonatology and her completion of a competitive pediatrics residency have given her a level of experience and education in the field that is unmatched by other general pediatricians. This background has helped her secure her present appointment as a clinical instructor and physician in the Neonatology department at Prior to this appointment, she was a clinical instructor and a physician in the department of pediatrics.
>
> [The petitioner] is also an accomplished research scientist. Published in leading internationally circulated journals, she has frequently presented her work in a variety of academic settings. Her work looked at the signaling pathways of various proinflammatory proteins and genes in the neonatal lung. This detailed work

> is likely to open up new opportunities for treatment of pulmonary disorders in neonates, and is just one example of her impressive published works.

Dr. letter contains an almost identical passage:

> Her work in neonatology and her completion of a competitive pediatrics residency have given her a level of experience and education in the field that is unmatched by other neonatologists. This background has helped her secure her present appointment as a clinical instructor and physician in the Neonatology department at Prior to this appointment, she was a clinical instructor and a physician in the department of pediatrics.
>
> [The petitioner] is also an accomplished research scientist. Published in leading internationally circulated journals, she is frequently invited to present her work to her peers. Her work ooked at the signaling pathways of various proinflammatory proteins and genes in the neonatal lung. This detailed work will open up new opportunities for treatment of pulmonary disorders in neonates, and is just one example of her impressive published works.

The similarities between the two quoted letters suggests that the language in the letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). The petitioner has not established that these letters represent the independent assertions of objective witnesses.

The director denied the petition on April 10, 2013. In the denial notice, the director observed that much of the petitioner's response to the request for evidence concerned activities after the petition's filing date. The director also stated that the record lacked evidentiary support for the claims in the witness letters.

On appeal, counsel states "clear evidence was submitted showing that [the petitioner] has made significant contributions to the field, that her work has impacted the national interest, especially her research work, and that she has distinguished herself from her peers, thereby justifying the waiver of labor certification." Counsel presents "a summary of major achievements," below:

- [The petitioner] is a lead clinical neonatologist at where she is well known for her exceptional care of infants with life threatening medical conditions.
- [The petitioner] is an invited member of the editorial team of

- [The petitioner] is also an acclaimed researcher, with works published in . . . the

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In this instance, the record demonstrates that the petitioner was not yet fully trained at the time she filed the petition. Counsel claims that the petitioner holds a leadership role at but the petitioner has not shown that this leadership extended beyond the supervision of less-advanced trainees. Likewise, the petitioner has not shown that it is unusual for a neonatologist to treat "infants with life-threatening medical conditions." No occupation qualifies foreign workers for a blanket waiver based on the nature of the work performed, and therefore statements about neonatology cannot establish eligibility.

In the request for evidence, the director had stated that the petitioner had not established her claimed editorial board memberships. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165. The petitioner's response to that notice did not address this concern. The petitioner's initial submission demonstrated that the editor of the asked the petitioner to review one manuscript. The editor's correspondence did not refer to the petitioner as a member of the journal's editorial board or explain the circumstances under which the journal sent the manuscript to her. The record does not establish the size of the journal's editorial board or the selection process for inclusion. The record does not show that participation in peer review is a rare privilege or otherwise sets peer reviewers apart from other researchers in the field of neonatology.

The existence of published articles by the petitioner does not establish that she is "an acclaimed researcher." The petitioner indicated at the time of filing that her publications had no citations, and the petitioner did not otherwise submit evidence to establish the impact of her published work.

Counsel concludes by stating that "numerous testimonies . . . made clear that [the petitioner] is highly respected for her clinical abilities which of course cannot easily be objectively documented on a labor certification."

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However,

USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 165. The letters submitted contain claims of significant recognition and influence, but lack corroboration as well as critical details. Anecdotal reports about individual instances of patient treatment cannot suffice to corroborate claims regarding the petitioner's wider reputation or level of achievement.

As shown above, the petitioner has submitted two letters from different authors with nearly identical language, which raises doubts about their true authorship. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Here, the letters contain key claims that the record otherwise fails to support, such as the assertion that the petitioner "is well known" in her field and that her findings "have since been incorporated as standard practice at many institutions." The evidence submitted does not support the claim that the petitioner is a distinguished, influential leader in her field.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.").

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.